

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of:

EMMANUEL G.

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2006030152

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on April 7, 2006, in Culver City.

Claimant was represented by his sister Adriana.¹

The Westside Regional Center (WRC or Service Agency) was represented by Martha Thompson, WRC Fair Hearing Coordinator.

Testimonial and documentary evidence was presented and argument given. The record was closed and the matter submitted for decision at the conclusion of the hearing.

ISSUE

Shall the Service Agency provide funding for Claimant to receive two hours per week of social skills training from Intercare Therapy, Inc.?

EVIDENCE RELIED UPON

Documentary: Service Agency exhibits 1-13; Claimant exhibits A-C.

Testimonial: Claimant's sister and mother. Ms. Thompson made an oral presentation but did not testify under oath. No other witnesses were called.

¹ Claimant and his family are referred to in a manner intended to protect their privacy.

FACTUAL FINDINGS

1. Claimant is an 18 year-old male, who is a consumer of WRC due to a diagnosis of autism.

2. In November of 2005, Claimant's mother requested the Service Agency to fund Claimant to receive social skills training from Intercare Therapy, Inc. (Intercare). By letter dated January 19, 2006, the Service Agency stated that it was unable to pay for such services because Intercare was only vendored to provide that service to consumers in the age group of 15 years or younger. The letter contained the names of two other providers that the Service Agency stated were vendored to provide social skills training to those 18 years and older.

3. On February 22, 2006, a Fair Hearing Request was submitted to the Service Agency on Claimant's behalf, which requested a hearing to appeal the Service Agency's denial of the service request.

4. Claimant is described in his recent Individual Program Plan (IPP) as a tall, good-looking young man, who takes pride in his appearance, but has difficulty socializing with peers. He lives at home with his parents and is currently a sophomore in high school.

5. The Service Agency does not dispute that Claimant is in need of social skills training or that the proper amount of such a service is two hours per week. In fact, the Service Agency has previously funded this kind of service for Claimant.

6. Intercare conducted an assessment of Claimant's social skills on December 5, 2005. In a report dated December 18, 2005, Intercare staff recommended that Claimant participate in one of its social skills therapy groups, for two hours per week, for six months.

7. Claimant's family has specifically requested that Intercare provide the social skills training for various reasons. First, they believe Intercare can help Claimant, as demonstrated by the above-described Intercare assessment report. Second, Intercare staff provide behavior services to Claimant at his school as part of his special education program and thus are already familiar with his performance and needs. Third, Intercare is located close to the family home, in an area known to Claimant and easy for him to reach by bus if necessary.

8. Intercare is presently vendored through the Frank D. Lanterman Regional Center to provide social skills training for consumers in the age range of 3 through 15 years old. Intercare is thus not vendored to provide such services to consumers that are Claimant's age (18). Recent efforts by Intercare have not been successful to raise the age range of their vendorization to consumers through the age of 21.

9. The Service Agency contends Claimant could be provided suitable social skills training by any of the following vendored providers:²

A. Mayra Mendez, Ph.D. The family has learned that Dr. Mendez does not work with those suffering from autism and thus her program is not suitable for Claimant.

B. The Lunch Group, Bruce Gale, Ph.D. Dr. Gale is apparently vendored to work with 18 year-old consumers. However, the family has learned that only two groups are available in an area convenient to Claimant. One of those groups is full and has a waiting list; the other group only meets twice per month, which would not provide a sufficient number of hours for Claimant. Thus, Dr. Gale's program is not suitable for Claimant.

C. The Social Circle, Derek A. Ott, M.D. The Social Circle is vendored to work with consumers from ages 18-22, among others. In fact, Claimant previously received social skills training from The Social Circle in at least 2003. A 2003 report from that provider indicated that Claimant made good progress there. The family's only complaint was that Claimant became too attached to a female staff member and that she did not properly respond. That problem could be easily addressed by simply switching staff and/or using a male therapist to conduct the group. Therefore, the criticism by Claimant's family regarding that program was not persuasive. Thus, Dr. Ott's program is suitable for Claimant.

LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)³ An administrative hearing is available to a consumer under the Lanterman Act to appeal a service agency's denial of a service request. (§§ 4700-4716.) Claimant properly appealed from the Service Agency's denial of his service request and thus jurisdiction was established. (Factual Findings 1-3.)

2. Where one seeks eligibility for government benefits or services, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231 Cal.App.2d 156, 161 (disability benefits).) The standard of proof in such cases requires proof to a preponderance of the evidence, because no other law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.) Since Claimant is requesting a service the WRC has not before agreed to provide (social skills training from a particular service provider), Claimant has the burden of establishing entitlement to service from that provider by a preponderance of the evidence. (Factual Findings 1-3.)

² A "vendored" provider is one who has gone through a lengthy application process established by regulations and been approved by a regional center to provide particular services to particular consumers. (See, Cal. Code Regs., tit. 17, § 54300 et seq.) An applicant for such vendorization can appeal a regional center's denial of its application. (Cal. Code Regs., tit. 17, § 54380.)

³ All further statutory references are to the Welfare and Institutions Code, unless otherwise specified.

3. “[S]ocial skills training” is among the services and supports specifically identified by the Lanterman Act to be provided to a consumer, where necessary. (§ 4512, subd. (b).)

4. In terms of delivering a necessary service to a consumer, the Lanterman Act requires flexibility to meet unusual or unique circumstances. For example, regional centers are encouraged to employ innovative programs and techniques (§ 4630, subd. (b)); to find innovative and economical ways to achieve goals (§ 4651); and to utilize innovative service-delivery mechanisms (§§ 4685, subd. (c)(3), and 4791.) Similarly, services and supports “shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.” (§ 4648, subd. (a)(2).) Regional centers are required to respect and support the decision-making authority of a consumer’s family; be flexible and creative in meeting the unique and individual needs of a consumer’s family as they evolve over time; and meet the cultural preferences, values, and lifestyles of the consumer’s family. (§ 4685, subd. (b).)

5A. WRC agrees here that it can use any service provider vendored through any regional center for a requested service, even if that provider is not vendored through the WRC. However, all service providers that are so “vendored” are “prohibited from being vendored by more than one regional center for the same service at the same location” (Cal. Code Regs., tit. 17, § 54326, subd. (a)(14).) “Service” is defined in this area of the regulations as “assistance provided, and duties performed, by a vendor for a consumer.” (Cal. Code Regs., tit. 17, § 54302, subd. (a)(62).) Thus, once a service provider becomes vendored for a particular kind of service, it may not become vendored with another regional center for that same service, unless the services are provided in a new location. What that means in this case is that Intercare cannot be vendored through the WRC to provide social skills training to those older than 15 absent Intercare providing that service in a different location, which it does not plan to do.

5B. However, the Lanterman Act provides that in securing necessary services and supports, a regional center may purchase services and supports “pursuant to vendorization or a contract” (§ 4648, subd. (a)(3).) “Vendorization or contracting” is defined as “the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.” (§ 4648, subd. (a)(3)(A).) Therefore, the Lanterman Act seems to contemplate that services may be obtained for a consumer by contract from a non-vendored provider, so long as a regional center is otherwise required to provide the requested service. Neither party cited any contrary statutory provision prohibiting services under the Lanterman Act from being so provided by a non-vendored provider.

6A. Claimant established by a preponderance of the evidence that he is entitled to funding for the requested service to be provided by Intercare. (Factual Findings 4-9.)

6B. As concluded above, the fact that Intercare is not currently vendored to provide social skills training to an 18 year-old consumer does not mean it is legally barred from being funded by the Service Agency to provide that service to Claimant.

6C. Providing such funding to Intercare is consistent with the Lanterman Act's general principles requiring flexibility and innovation in delivering services to meet the particular needs and preferences of a consumer and his family. In this case, Claimant's family has expressed a strong preference for Intercare to provide the requested service, even in lieu of using another suitable provider currently vendored to provide that particular service to Claimant (e.g. Dr. Ott). Credible evidence indicates the family's preference is in good faith and reasonable.

6D. In this unique situation, there appears to be no danger posed by Intercare providing a particular service to Claimant that it is not vendored to provide. Intercare is currently vendored to provide social skills training to consumers up to the age of 15, which indicates that Intercare is properly licensed, insured and competent to provide social skills training to adolescents. Intercare staff members believe they can provide effective social skills training to Claimant. Intercare is currently funded by Claimant's school district to provide related services to him through his special education program. The Service Agency did not contend in this case that Intercare is incompetent or otherwise unable to safely provide to Claimant the requested service.⁴

ORDER

Claimant Emmanuel G.'s appeal of the Westside Regional Center's denial of his service request is GRANTED. The Service Agency shall provide funding for Claimant to receive two hours per week of social skills training from Intercare Therapy, Inc., for a period of six (6) months.

DATED: April 24, 2006

ERIC SAWYER,
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision of this matter pursuant to Welfare and Institutions Code section 4712.5, subdivision (a). Both parties are bound by this decision. This decision may be appealed to a court of competent jurisdiction within 90 days of receipt of notice of this decision.

⁴ In any event, the Service Agency has stated its preference to use a service provider vendored to provide the exact service to Claimant. The family, with full knowledge of the situation, disagrees with WRC's recommendation. Thus, the family is knowingly assuming the risks associated with proceeding as they request in this case.